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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SERGIO ALBERTO MILLAN-CASTRO,

Defendant - Appellant.

No. 07-10110

D.C. No. CR-06-01408-1-RCC

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Arizona
Raner C. Collins, District Judge, Presiding

Submitted June 18, 2008^{**}

Before: REINHARDT, LEAVY, and CLIFTON, Circuit Judges

Sergio Millan-Castro appeals the 40-month sentence imposed following his guilty plea to illegal reentry after deportation, in violation of 8 U.S.C. § 1326, and possession of a firearm by an illegal alien, in violation of 18 U.S.C. §§ 922(g)(5)

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

and 924(a). He contends that his below-Guidelines-range sentence was unreasonable and contrary to 18 U.S.C. § 3553(a) because the district court gave undue emphasis to the advisory Sentencing Guidelines. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

We review the reasonableness of a sentence for an abuse of discretion. *United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc), *cert. denied*, 2008 WL 1815337 (U.S. May 19, 2008) (No. 07-10482). “All sentencing proceedings are to begin by determining the applicable Guidelines range.” *Id.* at 991. “The parties must be given a chance to argue for a sentence they believe is appropriate.” *Id.* “The district court should then consider the § 3553(a) factors to decide if they support the sentence suggested by the parties.” *Id.* The Guidelines factor should not “be given more or less weight than any other.” *Id.*

The district court followed this procedure. The government asked for a within-range sentence of 64 months, and Millan-Castro asked for a below-range sentence on the basis that his criminal history should be considered as category II rather than III, his prior conviction had a large effect on his Guidelines range, and he had led a productive life since his release from prison. The district court considered these arguments and imposed a sentence below the range for criminal history category II. The record thus shows that the district court properly

considered the § 3553(a) factors and did not give undue weight to the Guidelines range of 57 to 71 months. *See id.* We conclude that there was no procedural error and that the sentence was substantively reasonable. *See id.* at 993.

AFFIRMED.